

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**ROTH GRADING, INC., d/b/a  
IMPACT ROLLER TECHNOLOGY,  
a Nebraska Corporation,**

**Plaintiff,**

**VS.**

**TESTA CORP.,**  
**a Massachusetts Corporation,**

**Defendant.**

**8:04CV632**

## ORDER

This matter is before the court on the plaintiff's Motion to Compel Deposition Dates or to Extend Scheduling Deadlines (Filing No. 39). The plaintiff filed a brief (Filing No. 42), index of evidence (Filing No. 40) and an affidavit (Filing No. 41) in support of the motion. The plaintiff seeks an order compelling the defendant to participate in depositions during the month of August rather than wait until the month of September. Alternatively, the plaintiff seeks an extension of the discovery deadline from September 29, 2006, to at least October 30, 2006, and a similar extension of all other case deadlines and trial. In support of the motion, the plaintiff shows that one of the defendant's corporate representatives, Charlie Masterson, refused to allow a deposition to be scheduled before the Labor Day holiday. The plaintiff contends the witnesses and counsel are otherwise available in early August.

The plaintiff shows no justification pursuant to Federal Rule of Civil Procedure 37 for an order compelling the depositions to take place in August. The plaintiff fails to show reasonable notice for such depositions was served on the deponents under Rules 30(b) or 45. Additionally, the plaintiff fails to show good cause for an extension of discovery or other deadlines based on deposition scheduling “leaving no margin for any unexpected complications.” **See** Fed. R. Civ. P. 16(b) (“A schedule shall not be modified except upon a showing of good cause. . . .”). The court cannot compel appearance at a deposition which has not been properly noticed and will not extend adequate discovery deadlines merely because a corporate representative is uncooperative or inflexible. Deposition subpoenas are available pursuant to the Federal Rules of Civil Procedure.

Upon consideration,

**IT IS ORDERED:**

The plaintiff's Motion to Compel Deposition Dates or to Extend Scheduling Deadlines (Filing No. 39) is denied.

DATED this 1st day of August, 2006.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge